

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED**MAR 29 1993**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Tariff Filing Requirements for)
 Nondominant Common Carriers)

CC Docket No. 93-36

COMMENTS OF
LOCAL AREA TELECOMMUNICATIONS, INC.

Local Area Telecommunications, Inc. ("LOCATE"), by its undersigned counsel, hereby submits its comments on the Notice of Proposed Rulemaking ("Notice")^{1/} in the above-captioned proceeding concerning the tariff requirements that will apply to nondominant domestic common carriers following the recent decision of the United States Court of Appeals for the District of Columbia Circuit vacating the Commission's longstanding permissive detariffing rules.^{2/} As discussed herein, LOCATE strongly supports the Commission's tentative conclusions in the Notice in favor of establishing the least burdensome "maximum streamlined" tariffing rules for domestic nondominant carriers.

I. INTRODUCTION AND BACKGROUND

Since the construction of its first common carrier microwave system in 1983, LOCATE has been a leading provider of digital microwave services. LOCATE's customers

^{1/} Tariff Filing Requirements for Nondominant Carriers, Notice of Proposed Rulemaking, CC Docket No. 93-36, FCC No. 93-103 (released February 19, 1993).

^{2/} AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992) ("Forbearance Decision").

for digital microwave services include numerous Fortune 500 companies, interexchange carriers, cellular and paging companies.^{3/} As a provider of high-quality, reasonably priced telecommunications services, LOCATE's business has flourished as customer demand for such services has increased and the competitive services market has grown.

It is significant that the genesis of LOCATE's business coincides with the Commission's decisions in the Competitive Carrier proceedings.^{4/} In those proceedings, the Commission concluded that the public interest would be served by implementing a regulatory scheme under which the level of the Commission's regulatory scrutiny would be determined by whether the carriers subject to the Commission's authority wield market power. The Commission reasoned that it should continue to exercise rigorous regulatory oversight over dominant carriers (i.e., the local exchange companies ("LECs") and AT&T) who were not subject to competitive pressures and thus would have an incentive to cross-subsidize or to discriminate unreasonably in the provision of their services. In contrast, the Commission determined it should forebear from strictly regulating nondominant carriers because their services face intense competitive pressures, thus ensuring the fairness of their rates. Among other things, the Commission decided to forbear from imposing tariffing requirements for nondominant carriers.

^{3/} LOCATE is also a leader in the provision of Digital Termination Service and a pioneer in the development of personal communications services.

^{4/} Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 445 (1981); Second Report and Order, 91 F.C.C.2d 59 (1982); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 F.C.C.2d 554 (1983); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985) rev'd, 765 F.2d 1186 (D.C. Cir. 1985).

The Commission's forbearance policy thus reflects the view that the public interest is served by promoting vigorous competition among nondominant carriers as the most effective self-regulating mechanism and therefore less, not more, Commission regulation should be imposed on these emerging competitive markets. As a result of these decisions, in the last decade, LOCATE, as a nondominant carrier operating relatively free from cumbersome tariff and other regulatory filing requirements, has had the necessary flexibility to establish its leadership in providing competitive radio-based local area services to a variety of large customers. However, LOCATE's continued success --and the success of many other competitive domestic nondominant carriers -- depends on the extent to which the Commission's Rules permit nondominant carriers to operate in an environment unfettered by burdensome and restrictive regulation.

The Notice in this proceeding was prompted by the Court of Appeals recent ruling that, contrary to the Commission's forbearance policies, the plain language of the Communications Act requires all carriers, including nondominant ones, to tariff their rates. In response to the Court's decision, the Notice in this proceeding proposes tariff rules for nondominant carriers designed to comply with the Court's mandate while imposing only minimal burdens on nondominant carriers and Commission resources. These rules should be sufficiently flexible and streamlined to permit nondominant carriers, such as LOCATE, to continue to compete successfully in the market. Accordingly, LOCATE supports the

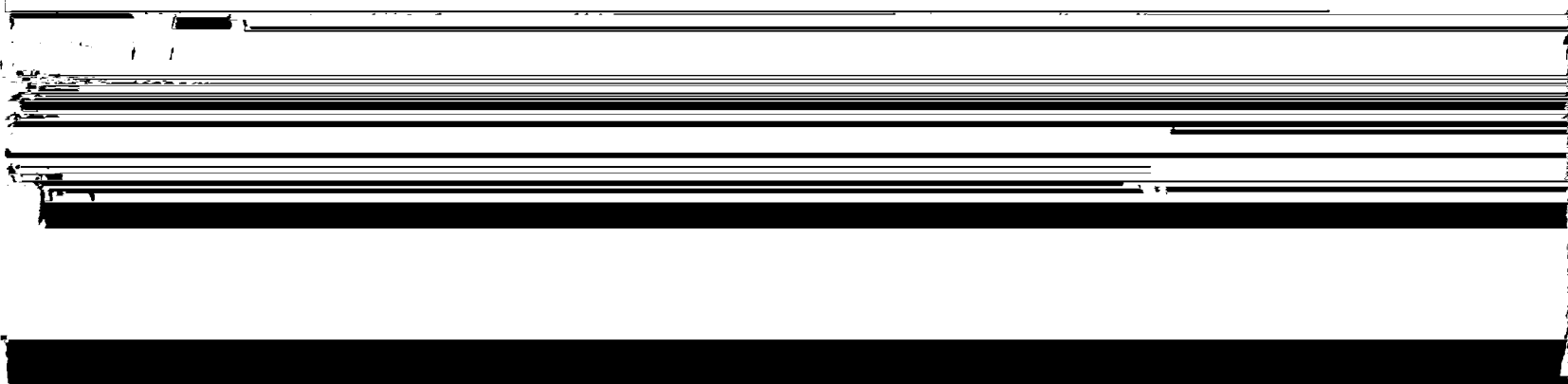
Commission's proposal to adopt maximum streamline tariff rules for nondominant carriers.^{5/}

II. THE PROPOSED STREAMLINED TARIFFING PROCEDURES FOR NONDOMINANT CARRIERS WILL PROMOTE CONTINUED COMPETITION

A. Nondominant Carrier Tariff Rules Should Include Minimal Notice Requirements

LOCATE supports the Commission's proposal to adopt a one-day notice requirement for nondominant carrier tariffs. Notice at paras. 14-15. The Communications Act grants the Commission broad discretion to determine the appropriate tariff notice period requirements for carriers. Specifically, Section 203(b)(2) provides that the Commission may, in its discretion and "for good cause shown," modify the tariff notice provision as long as the period does not exceed 120 days.^{7/} The Commission has exercised this discretion by establishing a one-day notice provision under which nondominant carriers have filed tariffs.^{8/}

The Commission's authority to establish a one-day notice period is not only consistent with the plain language of the Communications Act, it is also consistent with the Commission's public interest mandate under the Act. The tariff notice period rules are intended to provide the Commission with an opportunity to investigate the lawfulness of a



The Commission's experience over the past decade in this regard strongly supports this conclusion. As indicated in the Notice, the Commission has had no occasion to suspend and investigate nondominant carrier tariff filing.^{9/}

Nondominant carriers would also suffer substantial costs if the Commission imposes traditional tariff notice rules and review procedures. Given the fierce competition faced by nondominant carriers, particularly by those carriers striving to introduce competition for the first time in certain noncompetitive markets, it is likely that a fourteen-day review process will serve primarily as a means for other carriers to forestall competition by delaying implementation of nondominant carrier tariffs. If the Commission adopts a notice period longer than one-day, it will invite ongoing competitor disputes into the tariff review process with little, if any, corresponding regulatory or public interest benefit. Such disputes unnecessarily increase costs for carriers and stymie their ability to meet customer demand as efficiently and effectively as possible. Relatively small competitive nondominant carriers, that may have only a limited financial ability to prevail in a protracted tariff dispute at the Commission, will be especially vulnerable to competitive challenges made through the tariff review process.

A one-day notice period enables nondominant carriers to respond quickly to competition and customer demand. Faced with the constant need to provide high quality service, meet specific customer needs, and ensure that prices are at competitive levels at all times in a rapidly changing market, nondominant carriers require broad flexibility in the

^{9/} Notice at para. 14. Further, the Commission's review and complaint procedures provide additional opportunity for Commission review of carrier rates. 47 U.S.C. § 208.

Commission's tariff rules. Moreover, nondominant carriers are not the only parties to benefit from flexible tariff rules; consumers are the ultimate beneficiaries of Commission rules that enable carriers to deploy new services and adjust prices for competitive levels quickly and efficiently. However, if nondominant carriers must labor under unduly lengthy notice periods (and the fear of tariff litigation), the public will be denied the substantial benefits of effective competition.

B. Carriers Should Have Substantial Flexibility In Tariff Content Requirements

In order to preserve nondominant carriers' ability to respond quickly to market trends, the Commission also proposes to adopt flexible tariff content rules.^{10/} Among other things, the Notice proposes to ensure flexibility in ratemaking by authorizing nondominant carriers to tariff maximum rates or a minimum-maximum range of rates.^{11/} These provisions are critical to effective competition, and LOCATE strongly supports their adoption.

These provisions eliminate the requirement for carriers to prepare and file new rate schedules each time they decide to adjust their rates. In an environment in which carriers continually strive to adjust rate levels to respond to rapidly changing market conditions, the existing tariff rules substantially hinder their ability to compete effectively by requiring

^{10/} Notice at para. 13.

^{11/} Id. at para. 22.

repeated tariff revisions. Such revisions are costly to carriers,^{12/} delay initiation of new services, and undermine the benefit to consumers of competitive price adjustments. Given carriers' response to competitive pressures, moreover, rules requiring repeated tariff revisions serve no useful regulatory purpose. Accordingly, LOCATE strongly believes that tariff provisions allowing for flexibility in the form of maximum rates or a range of rates is essential to the ability of nondominant carriers to continue to compete. More rigorous tariff requirements will unnecessarily handicap nondominant carriers and stymie competition.

C. The Commission Should Adopt the Simplified, Streamlined Tariff Form Requirements Proposed In the Notice

LOCATE also supports the Commission's efforts to reduce the burdens of the tariffing process for nondominant carriers by authorizing nondominant carriers to file tariffs and updates on floppy diskettes (with updates integrated into the complete tariff), which would be accompanied by a cover letter in a form of the carrier's choice.^{13/} LOCATE supports these proposed rules that would give nondominant carriers added flexibility in meeting the tariffing requirement, while reasonably minimizing the costs of compliance with the Commission's Rules.

^{12/} The costs of filing tariff revisions, including the cost of the Commission's \$490 filing fee, are particularly burdensome to smaller nondominant carriers who face intense competition and cannot rely on large ratepayer revenues to absorb substantial administrative expenses.

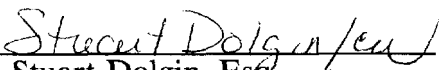
^{13/} Proposed Rule § 61.22.

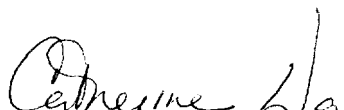
IV. CONCLUSION

LOCATE supports the Commission's proposal to adopt maximum streamlined tariff rules for nondominant carriers, including a one-day notice period, flexibility to tariff maximum rates or a range of rates, and streamlined tariff form requirements. Given that nondominant carriers do not wield market power, the Commission should rely to the extent possible on competitive marketplace forces to regulate nondominant carrier rates.

Respectfully submitted,

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Dated: March 29, 1993

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 1993, the foregoing documents were served on the following individuals:

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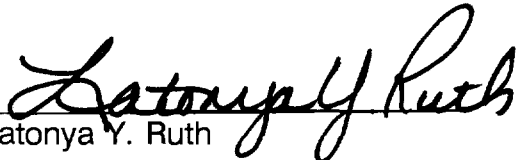
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